

Ferdinand Hurxthal; must be restored on payment of the salvage of one sixth part of the value. The property embraced in the claims on behalf of Peter Boue, junr. of R. Henry, of P. Doussault, of William Johnston and James Dowling, of G. Brousse, must be condemned to the captors. THE PRO-SCHLONER  
ADELINE.

The remaining claims must stand for farther proof. And as to the property unclaimed, it must be condemned as good and lawful prize to the captors.

The decree of the Circuit Court is to be reformed so as to be in conformity with this decision.

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THE BRIG ANN, M<sup>C</sup>CLAIN, MASTER.

1815.

March 10th.

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*Absent....TODD, J.*

APPEAL from the sentence of the Circuit Court for the district of Connecticut, which reversed that of the District Court, and restored the property to the Claimant. If a seizure, by a collector, for a violation of the revenue laws of the U. States be voluntarily abandoned, and the property restored before the libel or information be filed and allowed, the District Court has not jurisdiction of the cause.

STORY, J. delivered the opinion of the Court as follows:

This is an information against twelve casks of merchandize, part of the cargo of the brig Ann, alleged to have been imported or put on board with an intent to be imported contrary to the non-importation act of 1st March, 1809, ch. 91, § 5.

It appears from the evidence that the Ann sailed from Liverpool for New York in July, 1812, having on board a cargo of British merchandize. She was seized by a revenue cutter of the United States, on her passage towards New York, while in Long Island Sound, about midway between Long Island and Falkland Island, and carried into the port of New Haven about the 7th of October, 1812, and immediately taken possession of by

THE collector of that port, as forfeited to the United BRIG ANN, States. On the morning of the 12th of October the collector gave written orders for the release of the brig and M'CLAIN, cargo from the seizure, in pursuance of directions from MASTER. the secretary of the treasury, returned the ship's papers to the master, and gave permission for the brig to proceed without delay to New York. Late in the afternoon of the same day, the present information was allowed by the district judge, and on the ensuing day, the brig and cargo were duly taken into possession by the marshal, under the usual monition from the Court. On the trial in the District Court, the property now in controversy was condemned; and, upon an appeal, that decree was reversed in the Circuit Court.

It has been argued that the decree of the Circuit Court ought to be affirmed, because, on the whole facts, the District Court had no jurisdiction over the cause: and this argument is maintained on two grounds; first, That the original seizure was made within the judicial district of New York; and, secondly, That if the seizure was originally made within the judicial district of Connecticut, the jurisdiction thereby acquired by the District Court was, by the subsequent abandonment of the seizure and want of possession, completely ousted.

It is unnecessary to consider the first ground, because we are all of opinion that sufficient matter is not disclosed in the evidence to enable the Court to decide whether the seizure was within the district of New York or of Connecticut, or upon waters common to both.

The second ground deserves great consideration. By the judicial act of the 24th September, 1789, ch. 20, § 9, the District Courts are vested with "exclusive original cognizance of all civil causes of admiralty and maritime jurisdiction, including all seizures under laws of impost, navigation or trade of the United States, where the seizures are made on waters navigable from the sea by vessels of ten or more tons burthen *within their respective districts*, as well as upon the high seas." Whatever might have been the construction of the jurisdiction of the District Courts, if the legislature had stopped at the words "admiralty and maritime jurisdiction," it seems manifest, by the subsequent clause, that

the jurisdiction as to revenue forfeitures, was intended to be given to the Court of the district, not where the offence was committed, but where the seizure was made. And this with good reason. In order to institute and perfect proceedings *in rem*, it is necessary that the thing should be actually or constructively within the reach of the Court. It is actually within its possession when it is submitted to the process of the Court; it is constructively so, when, by a seizure, it is held to ascertain and enforce a right or forfeiture which can alone be decided by a judicial decree *in rem*. If the place of committing the offence had fixed the judicial forum where it was to be tried, the law would have been, in numerous cases, evaded; for, by a removal of the thing from such place, the Court could have had no power to enforce its decree. The legislature, therefore, wisely determined that the place of seizure should decide as to the proper and competent tribunal. It follows, from this consideration, that before judicial cognizance can attach upon a forfeiture *in rem*, under the statute, there must be a seizure; for until seizure it is impossible to ascertain what is the competent forum. And, if so, it must be a good subsisting seizure at the time when the libel or information is filed and allowed. If a seizure be completely and explicitly abandoned, and the property restored by the voluntary act of the party who has made the seizure, all rights under it are gone. Although judicial jurisdiction once attached, it is divested by the subsequent proceedings; and it can be revived only by a new seizure. It is, in this respect, like a case of capture, which, although well made, gives no authority to the prize Court to proceed to adjudication, if it be voluntarily abandoned before judicial proceedings are instituted. It is not meant to assert that a tortious ouster of possession, or fraudulent rescue, or relinquishment after seizure, will divest the jurisdiction. The case put (and it is precisely the present case) is a voluntary abandonment and release of the property seized, the legal effect of which must, as we think, be to purge away all the prior rights acquired by the seizure.

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On the whole, it is the opinion of the majority of the Court that the decree of the Circuit Court ought to be affirmed.